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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/795,923	03/08/2004	Daniel Kegel	1004-P03074US	1818
33356 7590 11/28/2007 SoCAL IP LAW GROUP LLP 310 N. WESTLAKE BLVD. STE 120 WESTLAKE VILLAGE, CA 91362			EXAMINER JEAN GILLES, JUDE	
			ART UNIT 2143	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/795,923

Applicant(s)

KEGEL, DANIEL

Examiner

Jude J. Jean-Gilles

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-35 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-35 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date See Continuation Sheet.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

Continuation of Attachment(s) 3). Information Disclosure Statement(s) (PTO/SB/08), Paper No(s)/Mail Date :12/20/2004, 08/29/2005, 04/12/2006, and 12/20/2006.

DETAILED ACTION

This office action is responsive to communication filed on 03/08/2004.

Information Disclosure Statement

1. The references listed on the Information Disclosure Statement submitted on 12/20/2004, 08/29/2005, 04/12/2006, and 12/20/2006 have been considered by the examiner (see attached PTO-1449A).

Claim Objections

2. **Claims 1, 6, 11, 16, 21, 26, and 31** are objected to because of the following informalities: The claims set forth a plurality of steps or elements, whereas, each step or element is not separated by a punctuation mark (*for example, a comma or a semi-column*). Appropriate correction is required.

Claims 1, 21, 26, and 31 are objected to for the following informalities. The Claims recite the phrase "*the activities of a large number of users*" in line 1. It is suggested to delete "the" before activities since a plurality of activities has not previously been identified in the claim. Appropriate correction is required.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. **Claims 1-2, 5-12, 15-23, 26-28, and 31-33** are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith et al (hereinafter Smith), U.S. Patent No. 6,091,802 in view of Averbuj et al (hereinafter Averbuj), U.S. Pub. No. 2005/0257109 A1.

Regarding claim 1, Smith teaches the invention substantially as claimed. Smith discloses a method of simulating network traffic activities of a large number of users in a telecommunications system (*see abstract*) comprising:

receiving a test script including a plurality of commands (*column 3, lines 40-48, continue in lines 59-67*)

invoking a script interpreter (*fig. 1, tester 100; column 3, lines 25-29, and column 4, lines 14-18; tester 100 is the script interpreter when invoked is capable of running and interpreting command and data of the test scripts*)

launching an application thread to execute the test script (*column 4, lines 61-65*).

However, Smith does not specifically disclose “invoking a protocol engine for each of the commands in the test script such that each protocol engine has an associated command”, and “each protocol engine executing its associated commands”.

In the same field of endeavor, Averbuj shows a mechanism for testing a telecommunication system by associating each Protocol engine to a testing algorithm command. Averbuj discloses "...*In particular, algorithm controller 26 sequentially delivers each command of the selected algorithm to sequencers 8, and proceeds from one command to the next upon receiving an acknowledge signal from each of sequencers 8. In this manner, algorithm controller 26 ensures that each sequencer 8 has completed application of a current command to memory modules 12 via memory interfaces 10 before proceeding to the next command...*" (see Averbuj, par. 0035, 0041, and 0042). The protocol sequencers are protocol engines and that each sequencer interprets the commands from the testing algorithms based on a command protocol (see Averbuj, abstract). In an attempt to facilitate simultaneous application of algorithms that contain many protocol commands to different modules applying each sequencer or engine its associated command makes sense in that it reduces the overall test time (see par. 12, and 0016).

Given this feature, a person of ordinary skill in the art would have readily recognized the desirability and advantages of modifying the system shown by Smith, to employ the features disclosed by Averbuj in order to offer the flexibility of allowing a variety of test algorithms to easily be defined and maintained centrally in the form of generalized commands, thereby eliminating the need to store common test algorithms in a distributed fashion (see Averbuj, par. 0015). By this rationale, claim 1 is rejected.

Regarding claims 2, 5-12, 15-23, 26-28, and 31-33 the combination Smith-Averbuj discloses:

2. The method of claim 1 wherein the commands in the test script simulate actions taken by a network user (*see Smith, column 2, lines 19-32; column 3, lines 30-38*).

5. The method of claim 1 wherein the test script causes network traffic to be produced (*see Smith, abstract; also see column 4, lines 58-64; note "the execution of test scripts for transmitting voice and digital data, detecting voice and digital data, and evaluating voice and digital data..."*).

6. The method of claim 1 wherein each protocol engine executing its associated command comprises:

checking whether a maximum number of protocol engines has been exceeded performing the executing when the maximum number of protocol engines has not been exceeded. (*see Averbuj; par 0035, Smith teaches "In this manner, algorithm controller 26 ensures that each sequencer 8 has completed application of a current command to memory modules 12 via memory interfaces 10 before proceeding to the next command. Algorithm controller 26 may be programmatically or statically configured to establish the number of device blocks 6 and, in particular, sequencers 8 that are present within electronic device 2..."* Because each controller (protocol engine) has to complete application of a current associated command, and that the number of available sequencers is taken into consideration, one can conclude that if the maximum of

protocol engines has been exceeded, the next command had to wait and cannot be immediately executed

7. The method of claim 6 wherein the checking further comprises: waiting for a system defined amount of time until attempting to execute again (*see Averbuj; fig. 3; par. 0035; 0037-0038*; the amount of waiting time here is proportional to the time programmatically required by controller 26 to ensure that each sequencer 8 has finish completing its current command operation).

8. The method of claim 6 wherein the checking further comprises: sleeping until system resources sufficient for the executing of the protocol engine are available until attempting to execute again (*see Averbuj; fig. 3; par. 0035; 0037-0038*)

9. The method of claim 1 wherein the network traffic is comprised of a plurality of data units adhering to a plurality of communications protocols (*see Smith, column 5, lines 48-61*).

10. The method of claim 9 wherein the plurality of communication protocols includes at least one of Ethernet, User Datagram Protocol (UDP), Transmission Control Protocol (TCP), Internet Protocol (IP), File Transfer Protocol (FTP), or Hypertext Transfer Protocol (HTTP) (*see Smith, column 10, lines 59-65*).

Claim 11 is similar in scope to claim 1, but is recited in the form of a machine readable medium instead of a method. Claim 11 is rejected for the same reasons specified for the rejection of claim 1 above.

Claim 12 is similar in scope to claim 2, and is rejected for the same reasons specified for the rejection of claim 2 above.

Claim 15 is similar in scope to claim 5, and is rejected for the same reasons specified for the rejection of claim 5 above.

Claim 16 is similar in scope to claim 6, and is rejected for the same reasons specified for the rejection of claim 6 above.

Claim 17 is similar in scope to claim 7, and is rejected for the same reasons specified for the rejection of claim 7 above.

18. The machine readable medium of claim 11 coupled with a network testing system (*see Smith, column 3, lines 10-18; fig. 1; see also Smith, column 1, lines 13-17*).

19. The machine readable medium of claim 18 wherein the network testing system is coupled to a production network (*see Smith, column 3, lines 10-18; fig. 1, switched telephone network 104 is the production environment network coupled to the system*

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tester 100; see also Smith, column 1, lines 13-17).

20. The machine readable medium of claim 19 wherein the network testing system is coupled to a test network (*see Smith, column 3, lines 10-18; fig. 1, communications system 102 network is a test network connected to system tester 100; see also Smith, column 1, lines 13-17).*

21. A system to create network traffic simulating the activities of a large number of users (*see Smith, abstract*), the system comprising:

a plurality of script interpreter units in user space (*see Smith; abstract, column 3, lines 49-67, column 4, lines 44-65; processors 222 each is a script interpreter unit scheduling and controlling the execution of the test scripts running on user test computer 202*)

each script interpreter unit to interpret a script including a plurality of commands (*see Smith; abstract, column 3, lines 49-67, column 4, lines 44-65*),

an application thread in user space for each script interpreter unit (*see Smith; column 4, lines 58-65*)

a plurality of protocol engines in user space for each application thread, each protocol engine executing a command included in one of the scripts is needed for the specified protocol, to execute the matching test script command (*see Averbuj, par. 0035, 0041, and 0042; the sequencers 8 which are the protocol engines operating device 2 and executing a test script command as specified by the associated protocol*),

an operating system in operating system space (*see Smith, column 4, lines 44-50; an example of the operating system in question here is WINDOWS NT*).

The same motivation and reason to combine used in the rejection of claim 1 is also valid for this claim. By this rationale, claim 21 is rejected.

22. The system of claim 21 wherein the system supports a plurality of communications protocols (*see Smith, column 5, lines 48-61*).

23. The system of claim 22 wherein the plurality of communications protocols includes at least Ethernet, User Datagram Protocol (UDP), Transmission Control Protocol (TCP), Internet Protocol (IP), and Hypertext Transfer Protocol (HTTP) (*see Smith, column 10, lines 59-65; see also Smith column 1, lines 1-17 whereas it is disclosed “...Telecommunication networks, such as conventional public or private switched telephone networks and more recently packet-switched networks and the Internet, interconnect human operators and telecommunication systems, which commonly run telephony applications including voice-mail, telephone banking systems, automated directory assistance, and multi-branched telephone customer service systems...”*. A person of ordinary skill in the art knows that such telecommunication systems are capable of supporting and running on a plurality of protocols such as UDP, TCP, IP, and HTTP).

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26. A system to create network traffic simulating the activities of a large number of users (see *Smith; abstract*), the system comprising:

a plurality of script interpreter units in user space (see *Smith; abstract, column 3, lines 49-67, column 4, lines 44-65; processors 222 each is a script interpreter unit scheduling and controlling the execution of the test scripts running on user test computer 202*),

each script interpreter unit to interpret a script including a plurality of commands (see *Smith; abstract, column 3, lines 49-67, column 4, lines 44-65*),

an application thread in user space for each script interpreter unit (see *Smith; column 4, lines 58-65*),

a plurality of protocol engines in user operating system space for each application thread, each protocol engine executing a command included in one of the scripts (see *Averbuj, par. 0035, 0041, and 0042; the sequencers 8 which are the protocol engines operating device 2 and executing a test script command as specified by the associated protocol*),.

an operating system in operating system space (see *Smith, column 4, lines 44-50; an example of the operating system in question here is WINDOWS NT*). The same motivation and reason to combine used in the rejection of claim 1 are also valid for this claim. By this rationale, claim 26 is rejected.

Claims 27, and 32 are similar in scope to claim 22, and are rejected for the same reasons specified for the rejection of claim 22 above.

Claims 28, and 33 are similar in scope to claim 23, and are rejected for the same reasons specified for the rejection of claim 23 above.

31. A system to create network traffic simulating the activities of a large number of users (see Smith, abstract), the system comprising:

a plurality of script interpreter units in user space (see Smith; abstract, column 3, lines 49-67, column 4, lines 44-65; processors 222 each is a script interpreter unit scheduling and controlling the execution of the test scripts running on user test computer 202)

each script interpreter unit to interpret a script including a plurality of commands (see Smith; abstract, column 3, lines 49-67, column 4, lines 44-65),

an application thread in operating system space for each script interpreter unit (see Smith;, column 4, lines 58-65),

a plurality of protocol engines in user operating system space for each application thread, each protocol engine executing a command included in one of the scripts (see Averbuj, par. 0035, 0041, and 0042; the sequencers 8 which are the protocol engines operating device 2 and executing a test script command as specified by the associated protocol)

an operating system in operating system space (see Smith, column 4, lines 44-50; an example of the operating system in question here is WINDOWS NT). The same

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motivation and reason to combine used in the rejection of claim 1 are also valid for this claim. By this rationale, claim 31 is rejected.

5. Claims 3-4, 13-14, 24-25, 29-30, and 34-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith and Averbuj, in further view of Jameson U.S. Pub. No. 20030107596 A1

Regarding claim 3, the combination of Smith-Averbuj teaches the invention in substance as claimed. Smith-Averbuj discloses the method of creating network traffic as per claim 1, but fail to disclose the details of a method wherein the commands in the test script include extended operation operating system commands.

In an analogous art, Jameson shows the use of work operations, specific computer programs, or computer scripts that carry out computer actions through the use of commands. Jameson discloses *"The default set of work operations made available by a computer operating system is called the default command set of the operating system. In practice, default operating system command sets are always extended with additional programs to provide users with application-specific work operations or commands. Thus the total set of work operations available in a typical command line shell window is the union of the default operating system command set and the additional application-specific work operation set"* (See Jameson par. 0018). In order to increase the total number of available work operations or commands in a typical

software environment this approach works, as it can increase the command list options for effectively testing the system.

Accordingly, it would have been obvious for an ordinary skill in the art, at the time the invention was made to have incorporated the invention of Jameson with the teaching of Smith and Averbuj, for the purpose of "automating systems to replace manual human effort thereby improving the productivity of software developers, web media developers, and other humans that work with collections of computer files" (see *Jameson, par. 0006-0008*). By this rationale, **claim 3** is rejected.

Regarding claims 4, 13-14, 24-25, 29-30, and 34-35, the combination Smith-Averbuj-Jameson discloses:

4. The method of claim 3 wherein the extended operation operating system commands include "fetch," "verify," "fetch and verify," "fetch and ignore," "monitor," and "count" (see *Jameson par. 0018*). While Jameson does not spell out in his teaching the specific commands indicated above, Jameson teaches default operating system command sets that are extended with additional programs to provide users with application-specific commands. Accordingly it would have been obvious for a person of ordinary skill in the art to have incorporated specific commands such as "fetch," "verify," "fetch and verify," "fetch and ignore," "monitor," and "count" in the command sets of Jameson for the purpose of automating the systems and improving the productivity as stated by Jameson in par. 0006-0008. The same motivation and reason to combine Jameson

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with Smith and Averbuj, used in the rejection of claim 1 is also valid for this claim. By this rationale, claim 4 is rejected.

Claims 13, 24, 29, and 34 are similar in scope to claim 3, and are rejected for the same reasons specified for the rejection of claim 3 above.

Claims 14, 25, 30, and 35 are similar in scope to claim 4, and are rejected for the same reasons specified for the rejection of claim 4 above.

Conclusion

6. **THIS ACTION IS MADE NON-FINAL.** Any inquiry concerning this communication or earlier communications from examiner should be directed to Jude Jean-Gilles whose telephone number is (571) 272-3914. The examiner can normally be reached on Monday-Thursday and every other Friday from 8:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Wiley, can be reached on (571) 272-3923. The fax phone number for the organization where this application or proceeding is assigned is 571-273-3201.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-0800.

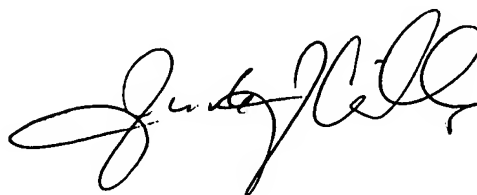
Jude Jean-Gilles

Patent Examiner

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JJG

November 22, 2007

A handwritten signature in black ink, appearing to read 'Jude Jean-Gilles', is written over the printed name and title.